



June 14, 1999

Ms. Bertha Bailey Whatley
Forth Worth Independent School District
100 N. University Drive
Fort Worth, Texas 76107

OR99-1645

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125043.

The Fort Worth Independent School District (the "school district") received a request for the following information:

1. All Employers First Report of Injury or Illness forms filed by teachers or staff at Boulevard Heights or Bluebonnet Special School within the last four years.
2. Total student enrollment as of September 1 for each of the past four years for Boulevard Heights or Bluebonnet Special School.
3. Total number of staff employed as of September 1 for each of the past four years for Boulevard Heights or Bluebonnet Special School.

You state that the information in items 2 and 3 of the request will be provided to the requestor. You contend that the documents requested in item 1 are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code and the Americans with Disabilities Act. We have considered the exception you claim and have reviewed a representative sample of the documents at issue.¹

Section 552.101 requires the withholding of information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 402.083(a) of the Labor Code states that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Texas Workers' Compensation Commission] except as provided by this subtitle." In Open Records Decision No. 533 (1989), the City of

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Brownsville received a request for the same type of documents requested here in item 1. This office construed the predecessor to section 402.083(a) to apply only to information that the City of Brownsville obtained from the Industrial Accident Board, now the Texas Workers' Compensation Commission. Because the school district does not obtain the documents at issue from the Texas Workers' Compensation Commission, the documents are not confidential under section 402.083(a).

Next, you contend that the documents at issue are confidential under the provisions of title I of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. § 12101 *et seq.* Most of the information on the submitted document cannot be considered medical information, and the "medical information" contained in the document does not appear to have been collected within the scope of the ADA provisions. *See* Open Records Decision No. 641 (1996). Therefore, we conclude that the ADA does not make the documents at issue confidential.

Finally, although the submitted document does not contain any information protected by the common-law right to privacy, we note that some types of medical information do implicate the individual right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that some kinds of medical information are protected by the common-law right to privacy. *See, e.g.*, Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, operations, and physical handicaps). Therefore, we urge you to exercise caution in releasing medical information to the public. *See* Gov't Code § 552.352 (distribution of confidential information is misdemeanor offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/nc

Ref: ID# 125043

Encl. Submitted documents

cc: Mr. Larry West
United Educators Association
4900 S. E. Loop 820
Fort Worth, Texas 76140
(w/o enclosures)